Petition

81-1329

Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS,
CLERK

NO.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SARAH D. BOLLOTIN,

PETITIONER,

VS,

RICHARD M. SCHWARTZ,ESQ.,HENRY FINKELSTEIN, ESQ.,DOE I-VI,D.B.A. FINKELSTEIN, SCHWARTZ & GOLDSTEIN,P.C.,"DOE" SIEGEL,"JOE"SCHWARTZ, D.B.A. SIEGEL & SCHWARTZ, ESQS.,ROBERT A. SCHWARTZ, ESQ.,PETER ZABEL, CHARLES H.COLES, ROE I-VI, D.B.A. ALL BORO PROCESS SERVICE, ALLEN G. SCHWARTZ,ESQ., N.Y.C.CORPORATION COUNSEL, HARRISON J.GOLDIN, N.Y.C. COMPTROLLER, THOMAS LEFTWICH, N.Y.C. CLAIM EXAMINER, POE I-VI, BRUCE C. RATNER, COMMISSIONER, N.Y.C.DEPT. OF CONSUMER AFFAIRS, DOUGLAS WHITE, ROBERT J.EGAN, DEPUTIES, MOE I-VI, STANLEY N. LUPKIN, COMMISSIONER, N.Y.C. DEPT, OF INVESTIGATION, ROBERT MACKASEK, ALLEN FITZER, DEPUTIES, KOE I-VI, N.Y.C. MARSHAL MONTARY QUIDLEY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SARAH D. BOLLOTIN,
PETITIONER, PRO SE,
310 RIVERSIDE DRIVE
NEW YORK, N.Y. 10025

QUESTIONS PRESENTED

1. Whether the New York City Administrative Code, Chapter 16, Law Dept., Title A, is valid under the due process and equal protection clauses of the United States Constitution.

2. Whether the Courts violated Petitioner's rights to statutory procedural protection under Title 28, U.S.C., Federal Rules of Civil Procedure.

3. Whether disqualification of Judges is required under Title 28 U.S.C. Section 455.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

OPINIONS AND AUTHORITIES . . . . . ii, iii

OPINIONS BELOW 2

JURISDICTION 2

STATUTES INVOLVED. 2

STATEMENT OF THE CASE. 3

REASONS FOR GRANTING THE WRIT , , , , , 4

1. Review and Reversal are necessary to establish conformity of N.Y.C. Administrative Code to requirements of the United States Constitution. . 4

2. The Federal Courts violated petitioner's right to statutory procedural protection under Title 28 U.S.C., Federal Rules of Civil Procedure. . . . 6

3. Disqualification of judges is required by Title 28 U.S.C. Sec.455 . . . 9

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Bell v. Chandler, 569 Fed.2d 556 (1978) 15

Kamnitzer v. City of N.Y., 265 App.Div. 636, 40 N.Y.Supp. 2d 139 (1943). . . . 5

Yates v. U.S., 356 U.S. 363 (1958) . . . 15

Page

STATUTES

Administrative Code of the City of N.Y., Chapter 16, Law Dept., Title A, #394a-1.0 4

28 U.S.C. Federal Rules of Civil Procedure

Rule 8(a) 7
Rule 8(e) 8
Rule 8(f) 8
Rule 12. 8
Rule 12(c) 6
Rule 12(e) 8
Rule 15 8
Rule 56(c) 8

28 U.S.C. Section 455. 3,9,10,15,16

28 U.S.C. Sections 1254(1),. 2
" 1331 2
" 1343 2

42 U.S.C. Sections 1983 2
" 1985 2
" 1988 2

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CONSTITUTIONAL PROVISIONS

Page

United States Constitution:

First Amendment 2

Fourth Amendment 2

Fifth Amendment 2,6

Fourteenth Amendment. 2,6

OTHER REFERENCES

Disqualification of Judges...IN Harvard Law Review, vol.86,no.4. Feb. 1973 pp.736-764 . . . . . 15, 16

Meeting the Challenge: rethinking Judicial Disqualification, by Edward G. Burg IN California Law Review,Sept.1981 15,16

APPENDIX

Opinion, U.S.D.C., S.D.N.Y.,79 Civil 6197 (TPG) A1

Judgment (79 Civil 6197 (TPG). A9

Opinion and Judgment of the U.S. Court of Appeals, Second Circuit, Docket No. 81-7318 . . . . . A10

Digest of Authorities Cities A13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

NO.

SARAH D. BOLLOTIN,

PETITIONER,

VS.

RICHARD M. SCHWARTZ,ESQ.,HENRY FINKELSTEIN, ESQ.,DOE I-VI,D.B.A. FINKELSTEIN, SCHWARTZ & GOLDSTEIN,P.C.,"DOE" SIEGEL,"JOE"SCHWARTZ, D.B.A. SIEGEL & SCHWARTZ, ESQS., ROBERT A. SCHWARTZ, ESQ.,PETER ZABEL, CHARLES H.COLES, ROE I-VI, D.B.A. ALL BORO PROCESS SERVICE, ALLEN G. SCHWARTZ,ESQ., N.Y.C. CORPORATION COUNSEL, HARRISON J. GOLDIN, N.Y.C. COMPTROLLER, THOMAS LEFTWICH, N.Y.C. CLAIM EXAMINER, POE I-VI, BRUCE C. RATNER, COMMISSIONER, N.Y.C. DEPT. OF CONSUMER AFFAIRS, DOUGLAS WHITE, ROBERT J. EGAN, DEPUTIES, MOE I-VI, STANLEY N. LUPKIN,COMMISSIONER, N.Y.C. DEPT.OF INVESTIGATION, ROBERT MACKASEK, ALLEN FITZER, DEPUTIES, KOE I-VI, N.Y.C. MARSHAL MONTARY QUIDLEY,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinions of the United States District Court, S.D.N.Y., dated March 30, 1981 and the United States Court of Appeals, Second Circuit, dated October 19, 1981 were not reported.

Both opinions are reproduced in the Appendix, infra, at A1 and A10 with Judgment at A9.

JURISDICTION

Petitioner, Pro Se, did not petition for rehearing and this Court has jurisdiction under 28 U.S.C. Section 1254(1).

THE STATUTES INVOLVED

Petitioner instituted this action pro se pursuant to 28 U.S.C. Sections 1331 and 1343; 42 U.S.C. Sections 1983, 1985, 1988 and also for the purpose of protecting and enforcing rights guaranteed by the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution with special emphasis involving violation of petitioner's right to due process and equal protection of the laws,

Plaintiff further invoked the pendent jurisdiction of this Court to consider claims arising under the laws of the State of New York.

On October 2, 1981 plaintiff-appellant-petitioner served and filed Affidavit To Disquality Panel sitting in the United States Court of Appeals for the Second Circuit on October 7, 1981 under 28 U.S.C. Section 455.

STATEMENT OF THE CASE

This action stems from an illegal eviction by Law-Firm defendants. (See Opinion A2, infra). Petitioner sought help from various New York City defendants to no avail. Within the time allowed, petitioner filed a claim against the City of New York, et al in the amount of ten-million dollars, which claim was arbitrarily and capriciously disallowed, whereupon petitioner challenged the constitutionality of the New York City ordin-

ance which bars its' citizens from taking further legal action after a claim for damages has been disallowed. On motions by defendants, the District Court dismissed petitioner's complaint and petitioner appealed to the U.S. Court of Appeals for the Second Circuit which affirmed the judgment.

REASONS FOR GRANTING THE WRIT

1. REVIEW AND REVERSAL ARE NECESSARY TO ESTABLISH CONFORMITY OF THE N.Y.C. ADMINISTRATIVE CODE TO REQUIREMENTS OF THE U. S. CONSTITUTION.

Under the Administrative Code of the City of New York, Chapter 16, Law Dept., Title A, #394a-1.0 a N.Y.C. claimant must file a Claim with the City prior to taking any other type of legal action against the City of New York.

After such claim has been disallowed, the only recourse a citizen has is to test the constitutionality of the ordinance which permits the arbitrary and capricious ruling

by a form letter without any hearing whatsoever.

In Kamnitzer v. City of New York, 265 App. Div. 636, 40 N.Y.Supp. 2d 139 (1943), the court held:

> "Respondent city of New York urges... immunity upon the city... The modern tendency is against the rule of nonliability of municipalities for the acts of employees appointed by municipal authorities and paid with municipal funds...
>
> "The object of the notice [of claim] is to give the city authorities time to investigate, and, if the claim is good, pay without suit... The notice is in substantial compliance with the statute...
>
> "Judgment insofar as it dismisses the complaint against the City of New York should be reversed... with costs to the appellants."

Petitioner herein sued the New York City Commissioner of Investigation for failure to investigate anything. Moreover, if employees of the City can interpret the Administrative Code as a grant of authority to disallow a

claim on the basis of a form letter, it is clear that the statute is fatally defective. Petitioner relies upon the requirements of the Fifth and Fourteenth Amendments to the United States Constitution which provide for due process and equal protection.

2. THE FEDERAL COURTS VIOLATED PETITIONER'S RIGHT TO STATUTORY PROCEDURAL PROTECTION UNDER TITLE 28 U.S.C. FEDERAL RULES ON PROCEDURE.

On November 6, 1980 the Law-Firm defendants filed Motion for Judgment On The Pleadings pursuant to Rule 12(c) Federal Rules of Civil Procedure. On November 21, 1980 the City defendants filed Motion For Judgment on the Pleadings pursuant to Rule (12c) Fed.R. Civ.P. On January 5,1981 petitioner filed two separate Replies In Opposition to said motions supported by sixteen (16) exhibits showing Law Firm's affidavit to be perjury. Petitioner also filed "Plaintiff's Memorandum of Law" in support of Replies submitted.

The following colloquy appears in the Certified Shorthand Reporter's Official Transcript of the oral argument before the Second Circuit Panel on October 7, 1981:

"Miss Bollotin: ...The assumption was that I would never be afforded any procedural protection. I would be run roughshod right out of court, and I raise that...as Point 2: 'The District Court must be overruled on the grounds that appellant was denied all statutory procedural protection' and I wouldn't have time to outline the cases I cited in my Reply Brief, but it is very clear.

"Judge Feinberg: Why don't you tell us exactly what protections you were denied in the court.

"Miss Bollotin: Well, they simply filed motions to dismiss and motion for summary judgment and my assumption was...that the facts would come out on trial, but I never got a chance at a trial and under the system whereby an attorney under color of law can ignore the requirements of the United States Code, Title 28, the Rules on Federal Procedure...

"In my Addendum on page 12 of my Reply Brief I set forth Rule 8(a) 'All that is required is a 'short and plain statement

"of the claim.'

Rule 8(e) "It is more appropriate to raise the affirmative defense in answer rather than in a motion to dismiss. Rule 8(f), "All pleadings shall be so construed as to do substantial justice.

Rule 12 "Provides for the requirement looking beyond the face of the pleading.

12 (e), "Allows motion to request a more definite statement of the pleadings.

Rule 15, "the right to amend.

"And Rule 56(c) which was ignored completely, 'The judgment sought shall be rendered forthwith if the pleadings together with affidavits, if any, show that there is no genuine issue as to material fact and that the moving party is entitled to a judgment as a matter of law."

"That is absolutely not the case. There are numerous issues of fact. There are serious questions in all of the papers which are before the Court and it is a gross error on the part of the lower court to have dismissed without providing me any opportunity whatsoever to present my case...

"There is also the matter of perjury, the question which I raised in my briefs, and the constitutionality of the New York statute by which a municipal employee can simply throw you out of court, write you a

"letter and you are finished... Haven't they ever heard of the Magna Carta or the United States Constitution or statutory Law?"

It is well settled that a court may not ignore federal statutes plainly written.

3. DISQUALIFICATION OF JUDGES IS REQUIRED BY TITLE 28 U.S.C. SECTION 455.

The records herein show that the Courts always favored defendant attorneys whilst they are clearly biased and prejudiced against petitioner.

On March 9, 1981 by letter to Acting Chief Justice Lloyd P. MacMahon, U.S.D.C., S.D.N.Y., petitioner lodged formal complaint against Judge Thomas P. Griesa in 79 CIVIL 6197 (now the within case) on the grounds that: "He has stalled on rendering any ruling or decision for more than sixty (60) days on the motions in question.

On March 31, 1981 the lower court finally filed its opinion (A1, infra). Petitioner appealed.

On May 1, 1981 petitioner received Scheduling Order from the Second Circuit Clerk together with Notice of Appearance Form which was returned with a request for twenty minutes for oral argument.

On September 1, 1981 a Second Circuit Clerk advised petitioner that although the Calendar was set through September 25, 1981 her case did not appear on the Calendar. Therefore, petitioner wrote to A. Daniel Fusaro, Clerk, requesting priority rights to a speedy hearing on the grounds that she was almost 71 years of age. Accordingly, this case was then scheduled for oral argument on October 7, 1981.

The proposed sitting of the Second Circuit was published and announced at noon on October 1, 1981, as follows: Feinberg, Chief Judge, Friendly, Timbers, Meskill, C.J.J.

On October 2, 1981 petitioner filed Affidavit to Disquality Panel under 28 U.S.C. Sec. 455 on the grounds that both Judges

Friendly and Meskill sat, together with Judge Walter R. Mansfield, Presiding, on October 16, 1980 in prior companion case, Bollotin V. Kaufman et al, Docket #80-7464, U.S.D.C., S.D.N.Y. 79 Civil 6370 (GLG) and notwithstanding the fact that petitioner charged those attorneys with perjury, subornation of perjury and obstruction of justice as clearly evidenced by the record, they affirmed the lower court's dismissal of the case on motion. The case at bar is almost a rubber stamp of the foregoing.

The following colloquy is excerpted from the Certified Shorthand Reporter's Transcript of oral argument held Wednesday, October 7, 1981:

"Judge Feinberg:...Each side has ten minutes... ... ...

"Miss Bollotin: I have been to the Clerk's office numerous times since September 1st and my only feeling from the outset was that the panel would be extremely import-

ant in view of the fact that this is really a companion case, as I set forth in the Affidavit, which I served on October 2nd, which was Friday. But I could not get any information until Thursday noon, which is the reason why within twenty-four hours I did all of this work myself and I pointed out that in this affidavit that I filed, cases No. 1980/7464, on 11/28/79 in the District Court and that case was pushed through the courts as quickly as possible without any procedural protection being afforded plaintiff whereas the within action was filed on 11/19/79 and has been subjected to every stall and delay tactic." ... ...

"Judge Feinberg: Miss Bollotin, I am afraid your time is about up.

"Miss Bollotin: I believe that I am justified in alleging that here is perjury on its face. Thank you."

Panel alleged that this panel's impartiality might reasonably be questioned; that this panel is so biased and prejudiced against plaintiff-appellant that it would be an exercise in futility to proceed until an independent-minded and fair court could sit and the issues are so serious that this cause should be heard en banc.

Judge Friendly recused himself and did not sit on October 7, 1981. Petitioner was in the very delicate position of arguing before the Chief Judge of the Second Circuit. The opinion (All, infra) simply states:

"Appellant's motion, filed October 2,1981 to disqualify the panel is denied." The judgment of the District Court was affirmed.

Soon after the oral argument was over, petitioner looked at the September 1981 issues of the NRTA/AARP News Bulletins and discovered that she is a member of the plaintiff class in pending lawsuits, in the U.S.D.C.,S.D.N.Y. 77 Civil 5151 (TPG) Nathan Malchman et al v.

Leonard Davis... Colonial Penn Group, Inc. et al wherein Kaufman, Taylor & Kimmel and Shea & Gould as Counsel for Plaintiffs are asking for fees not to exceed $2,325,000.00.

Petitioner immediately recalled her brief conversation with Stanley L. Kaufman, Esq. following her bench trial on May 4, 1976 in U.S.D.C. S.D.N.Y. 75 Civil 1282 (DBB) from which the foregoing charges and litigation stems, to-wit:

"Mr. Kaufman: You were a superb witness.

"Miss Bollotin: I just followed counsel's advice.

"Mr. Kaufman: I never made so much money so fast in my life--over a million dollars."

Petitioner is now a member of the plaintiff class in which these same attorneys are acting for the class and understands why the District Court was so anxious to cover-up facts and push case #79 CIVIL 6370 (GLG) through the courts while obstructing the proceedings in case #79 CIVIL 6197 (TPG) until the court has ruled in 77 CIVIL 5151 (TPG) which is pending.

In Yates v. U.S., 356 U.S. 363 (1958) the court held: "The District Court appears not to have exercised its discretion... but, in effect, to have sought merely to justify the original sentence. This court has no alternative except to exercise its supervisory power over the administration of justice in the lower federal courts."

The Court granted certiorari, vacated judgment and the cause was remanded to the District Court with directions.

In Bell v. Chandler, 569 Fed.2d 556(1978) the court compelled disqualification of Judge Chandler and remanded the case for further proceedings.

Section 455 U.S.C. Title 28 provides:

(a) Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party...

In 86 Harvard Law Review at page 741

on Disqualification of Judges, it is stated:

> "The ABA Canons of Judicial Ethics have, since 1924, implored all judges to keep their conduct 'free from impropriety and the appearance of impropriety' "

and at page 764 the Conclusion holds:

> "It is essential that judges be disqualified whenever the public may reasonably question their impartiality."

In the California Law Review, September 1981, at page 1481 it is stated, "In fact... notions of due process presuppose the existence of an impartial tribunal. Disqualification law should be directed to the maintenance of this impartiality." (At pg.1481).

"Section 455(a) of the federal test requires disqualification whenever a judge's impartiality might reasonably be questioned.

"We can and should demand withdrawal by a judge when a litigant has a reasonable belief in her partiality." (At pg. 1485).

CONCLUSION

The appearance of impropriety permeates the entire litany of petitioner's litigation. For the aforesaid reasons, it is urged that

that the Panel of Judges should be disqualified and a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Second Circuit. This Petition should be granted.

Dated: New York, N.Y.
January 14, 1981

Respectfully submitted

Sarah D. Bollotin

Sarah D. Bollotin,
Petitioner, Pro Se.

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - x : #51412

SARAH D. BOLLOTIN,
Plaintiff,
v.

RICHARD M. SCHWARTZ,ESQ., HENRY FINKELSTEIN,ESQ., DOE I-VI,D.B.A: FINKELSTEIN, SCHWARTZ & GOLD-STEIN,P.C., "DOE" SIEGEL,"JOE" SCHWARTZ,D.B.A. SIEGEL & SCHWARTZ ESQ.,ROBERT A.SCHWARTZ,ESQ., PETER ZABEL, CHARLES H.COLES, ROE I-VI,D.B.A. ALL BORO PRO-CESS SERVICE, ALLEN G. SCHWARTZ, ESQ.,N.Y.C.CORPORATION COUNSEL, HARRISON J.GOLDIN, N.Y.C. COMP-TROLLER, THOMAS LEFTWICH, N.Y.C. CLAIM EXAMINER, POE I-VI, BRUCE C. RATNER, COMMISSIONER, N.Y.C. DEPT. OF CONSUMER AFFAIRS, DOUG-LAS WHITE, ROBERT J. EGAN, DEPU-TIES, MOE I-VI, STANLEY N.LUPKIN, COMMISSIONER, N.Y.C.DEPT. OF IN-VESTIGATION, ROBERT MACKASEK, ALLEN FITZER, DEPUTIES, KOE I-VI, N.Y.C. MARSHAL MONTARY QUIDLEY,

DEFENDANTS.

FILED
U.S. DISTRICT COURT
MAR 31
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S.D.N.Y.

79 Civ. 6197

OPINION

- - - - - - - - - - - - - - - - - x

GRIESA, J.

This is an action brought by a plaintiff pro se. Plaintiff alleges that the various defendants have acted individually and occasionally collectively to violate various

of her federal constitutional rights. Defendants have moved for judgment on the pleadings or in the alternative for summary judgment. Defendants' motion is granted and the case is dismissed.

I.

The plaintiff's complaint, filed on November 19, 1979, involves three groups of facts and three corresponding sets of defendants. The first group includes Richard M.Schwartz, "Henry" (really Daniel) Finkelstein, and Doe I-VI, d/b/a/ Finkelstein, Schwartz & Goldstein, P.C., the "law firm defendants." At one time plaintiff apparently resided at 200 West 16th Street. In mid-1977 plaintiff's landlord began a summary proceeding for non-payment of rent in the New York City Civil Court. The landlord's counsel in that action was defendant law firm, Finkelstein, Schwartz & Goldstein, P.C.

Plaintiff answered the August 15, 1977 calendar call of that summary proceeding and the matter was set down for a hearing on Aug-

ust 22, 1977. Plaintiff did not appear on August 22, and a default judgment was entered in favor of her landlord. Plaintiff moved to vacate that default judgment on November 23, 1977 and the motion was denied.

A second summary proceeding for non-payment of rent was started against plaintiff by the same landlord in December, 1977. Again, after answering the calendar call plaintiff failed to appear at the subsequently scheduled hearing and a default judgment was entered against her on December 27, 1977.

Plaintiff appealed both default judgments to the Appellate Term, First Department, Both were affirmed on May 25, 1978. A warrant of eviction issued based on the judgments, and plaintiff was evicted from her apartment on June 27, 1978. Plaintiff bases her claim that the law firm defendants violated her federal constitutional rights on these facts.

The second group of defendants includes "Doe" Siegel and "Joe" Schwartz, d/b/a Siegel

& Schwartz, Robert A. Schwartz, Peter Zabel, Charles H. Coles, and Roe I-VI, d/b/a All Boro Process Service, Bruce Ratner, New York City Commissioner of Consumer Affairs, and Douglas White and Robert J. Egan, deputies in Ratner's office.

About the time the summary proceedings were going on, plaintiff attempted to sue her dentist in state court. Plaintiff employed All Boro Process Service to serve process in that case. Plaintiff claims that All Boro Process Service deliberately held up service for the purpose of delaying the lawsuit until after the statute of limitations had run out. Plaintiff then complained to Bruce Ratner's office, requesting that All Boro Process Service's City license be revoked. A hearing was held on June 27, 1978. Plaintiff claims that the failure of defendant Ratner to provide a reporter for the hearing, and the subsequent dismissal of her complaint against All Boro Process Service, violated her federal consti-

tutional rights. This is the basis for plaintiff's claims against the All Boro Process Service defendants and the City Consumer Affairs Department defendants.

The third group of defendants includes Allen G. Schwartz, New York City Corporation Counsel, Harrison J. Goldin, New York City Comptroller, Thomas Leftwich, New York City Claim Examiner, Poe I-VI, Stanley N. Lupkin, New York City Commissioner of Investigation, Robert Mackasek and Allen Fitzer, Deputies in Lupkin's office, Koe I-VI, and New York City Marshal Montary Quidley.

In seeking further aid from various city offices regarding her eviction, plaintiff at one point complained to the Department of Investigation. In seeking help there, plaintiff states she was advised to "get a lawyer," and that no other help was forthcoming. Finally, on August 30, 1978 plaintiff filed a notice of claim against the City of New York in the amount of $10,000,000. The basis for the

claim was an allegation that the June 27, 1978 eviction was illegal, and that Quidley had taken all her property. The claim was disallowed on November 13, 1978. This is the basis for plaintiff's claim that this group of New York City defendants violated her federal constitutional rights.

II.

Plaintiff's claims are completely without merit. The non-city defendants will be considered separately from the city defendants.

As to the claim that the law firm defendants violated plaintiff's federal constitutional rights and so should be held liable to plaintiff under 42 U.S.C. #1983, no state action has here been pleaded or otherwise shown to exist. Regarding other claims, there is no showing that the law firm defendants interfered in any way with plaintiff's "privileges and immunities or the equal protection of the laws." Great American Federal Savings & Loan Ass'n v. Novotny, 442 U.S. 366 (1979). Plaintiff has not shown there to be any cause of

action over which this court has jurisdiction. As to the merits of the eviction proceeding, plaintiff has had her days in state court. There is no indication of any federal constitutional violation in connection with the eviction proceeding, and this court has no jurisdiction to review those proceedings.

While plaintiff has never been able to serve the All Boro Process Service defendants, the court on its own motion dismisses the case as to those defendants for the reasons stated above in connection with the law firm defendants.

As to all the claims against the City defendants, "the complaint is a hodgepodge of vague and conclusory allegations." Powell v. Jarvis, 460 F.2d 551 (2nd Cir. 1972) and so should be dismissed. Construing the complaint as liberally as possible, the action should still be dismissed. Advice to "get a lawyer" is nothing on which to base any cause of action under the federal constitution. In connection with the Department of Consumer Affairs, plaintiff has submitted exhibits indicating that

a hearing was held and that the evidence she presented on All Boro Process Service was reviewed and found insufficient to warrant any action against All Boro Process Service. None of this gives rise to any federal constitutional claim. Finally, given that plaintiff's $10,000,000 claim against the city was based on her allegedly wrongful eviction, there is no basis for holding that denial of the claim was arbitrary and capricious given the result in the state court actions concerning her eviction. Thus this does not give rise to any federal constitutional claim.

The action is dismissed.

So ordered.

Dated: New York, New York
March 30, 1981

/s/ Thomas P. Griesa

THOMAS P. GRIESA
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

SARAH D. BOLLOTIN, : 79 CIVIL 6197
Plaintiff, (TPG)
:
-against-
: JUDGMENT
RICHARD M. SCHWARTZ, ESQ., et al.
Defendants:

- - - - - - - - - - - - - - - - - -x

Defendants having moved for judgment on the pleadings or in the alternative for summary judgment, and the said motion having come before the Honorable Thomas P. Griesa, United States District Judge, and the Court thereafter on March 31, 1981, having handed down its opinion dismissing the action, it is,

ORDERED, ADJUDGED AND DECREED: That the action be and it is hereby dismissed.

Dated: New York, N.Y.
March 31, 1981

/s/ Raymond F. Burghardt
Clerk

SEAL
U.S. DISTRICT COURT
Filed
MAR 31 1981
S.D. OF N. Y.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York on the 19th day of October one thousand nine hundred and eighty-one.

Present: HONORABLE WILFRED FEINBERG
Chief Judge
HONORABLE WILLIAM H. TIMBERS
HONORABLE THOMAS J. MESKILL
Circuit Judges.

- -x

SARAH D. BOLLOTIN,
Plaintiff-Appellant,

-v.- 81-7318

RICHARD M. SCHWARTZ, ESQ., et al,
Defendants-Appellees.

- -x

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

SEAL
UNITED STATES COURT OF APPEALS
FILED
OCT 19 1981
A. Daniel Fusaro, Clerk
SECOND CIRCUIT

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by appellant pro se and by counsel for appellees.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED.

This is an appeal by Sarah D. Bollotin from a judgment of the United States District Court for the Southern District of New York, Thomas P. Griesa, J., dismissing her complaint for failure to state a cause of action cognizable under federal law.

We affirm for the reasons set forth in Judge Griesa's opinion, dated March 30, 1981. Appellant's motion, filed October 2, 1981 to disqualify the panel is denied.

/s/ Wilfred Feinberg
WILFRED FEINBERG, Chief Judge

/s/ Wm. H. Timbers
WILLIAM H. TIMBERS,

/s/ Thomas J. Meskill
THOMAS J. MESKILL,
Circuit Judges.

JUDGMENT ENTERED 11/19/81

Raymond F. Burghardt
CLERK

TRUE COPY
A. DANIEL FUSARO, CLERK

By Francis X. Gindhart
Chief Deputy Clerk

DIGEST OF AUTHORITIES CITED

Administrative Code of the City of New York Chapter 16, Law Department, Title A, #394a-1.0.

a. In every action or special proceeding ...against the city,...at least thirty days have elapsed since the demand...or claims... were presented to the comptroller for adjustment, and that he has neglected or refused to make an adjustment or payment thereof...

b. An action against the city, for damages ... and the value thereof, shall have been filed with the comptroller within six months after such cause of action shall have accrued.

U.S.Code Title 28 Section 455.

See page 15, infra.

Title 28 Federal Rules of Civil Procedure: Rule 8(a), 8(e), 8(f), 12, 12(c), 12(e), 15 and 56(c). See pages 7 and 8, infra.

28 U.S.C. Sec. 1331 - Federal amount in controversy and costs.

28 U.S.C. Sec. 1343 - (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity, secured by the Constitution of the United States or by any Act of Congress providing for

equal rights of citizens ... within the jurisdiction of the U.S.

42 U.S.C. Sec. 1983 - Conspiracy to interfere with civil rights, damages for...

Sec. 1985 - Jurisdiction of District Courts of civil rights actions.

Sec. 1988 - Proceedings in vindication of civil rights for the protection of all persons...

United States Constitution:

First Amendment: Congress shall make no law respecting... the right... to petition the Government for a redress of grievances.

Fourth Amendment: ...The right of every person to be secure in their persons, houses, papers, and effects, against unreasonable ...seizures shall not be violated.

Fifth Amendment: No person shall be deprived of life, liberty, or property without due process... Private property not to be taken.

Fourteenth Amendment: No state shall make or enforce any law shich shall...deprive any person of life, liberty, or property, without due process...and equal protection of the laws.

Opposition

Office - Supreme Court, U.S.
FILED
FEB 22 1982
ALEXANDER L. STEVAS, CLERK

No. 81-1329
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

SARAH D. BOLLOTIN,

PETITIONER,

VS.

RICHARD M. SCHWARTZ, ESQ., HENRY FINKELSTEIN, ESQ., DOE I-VI, D.B.A. FINKELSTEIN, SCHWARTZ & GOLDSTEIN, P.C., "DOE" SIEGEL, "JOE"SCHWARTZ, D.B.A. SIEGEL & SCHWARTZ, ESQS., ROBERT A. SCHWARTZ, ESQ., PETER ZABEL, CHARLES H. COLES, ROE I-VI, D.B.A. ALL BORO PROCESS SERVICE, ALLEN G. SCHWARTZ, ESQ., N.Y.C. CORPORATION COUNSEL, HARRISON J. GOLDIN, N.Y.C.COMPTROLLER, THOMAS LEFTWICH, N.Y.C. CLAIM EXAMINER, POE I-VI, BRUCE C. RATNER, COMMISSIONER, N.Y.C. DEPT. OF CONSUMER AFFAIRS, DOUGLAS WHITE, ROBERT J. EGAN, DEPUTIES, MOE I-VI, STANLEY N. LUPKIN, COMMISSIONER, N.Y.C. DEPT. OF INVESTIGATION, ROBERT MACKASEK, ALLEN FITZER, DEPUTIES, KOE I-VI, N.Y.C. MARSHAL MONTARY QUIDLEY,

RESPONDENTS.

BRIEF OF CITY RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

FREDERICK A.O. SCHWARZ, JR.,
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LEONARD KOERNER,
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of Counsel.

Questions Presented

1. Did the United States Court of Appeals for the Second Circuit properly affirm, based on the District Court's opinion, the decision of the United States District Court for the Southern District of New York, that, giving the complaint the most liberal reading possible, it failed to state a claim upon which relief could be granted against all the City defendants?

2. Did the Court of Appeals for the Second Circuit properly deny petitioner's motion to disqualify its panel?

TABLE OF CONTENTS

	Page
Statement of Facts.....	1
Opinion of the District Court.....	7
Decision of the Court of Appeals...	8
ARGUMENT -	
THE DISTRICT COURT, HAVING GIVEN THE COMPLAINT THE MOST LIBERAL READING POSSIBLE, PROPERLY DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.....	9
Conclusion.....	13

TABLE OF AUTHORITIES

	Page
Conley v. Gibson, 355 U.S. 41 (1957).....	10
Kamnitzer v. City of New York, 265 App. Div. 636; 40 NYS 2d 139 (1st Dept., 1943).....	12
Weber v. Garza, 570 F.2d 511 (5th Cir., 1978).....	14

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RESPONDENTS.

BRIEF OF CITY RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF FACTS

The essential facts have been presented in the decision of the District Court, appended to the petition herein.

I

In 1977, petitioner hired All Boro Process Service to serve a complaint on her dentist for alleged malpractice. She believed that service of process had been improperly delayed by All Boro, thus barring her suit under the applicable statute of limitations.

In August 1977, petitioner's landlord commenced a summary proceeding against her for non-payment of rent. Trial was set for August 22, 1977; on that date petitioner failed to appear and default judgment was entered against her. On or about November 22, 1977, petitioner moved to vacate the default judgment; the application was denied. In early December 1977, the landlord brought another summary proceeding for non-payment of rent against petitioner; again a trial date was set; again petitioner failed to appear and again a default judgment was entered against her. Petitioner

appealed the judgment to the Appellate Term of New York Supreme Court.

In April 1978, a year after she had engaged the service of All Boro in her dispute with her dentist, petitioner filed a complaint with the New York City Department of Consumer Affairs based on All Boro's alleged faulty service.

In May 1978, the Appellate Term dismissed petitioner's appeal in the first summary proceeding. The Appellate Term also affirmed the judgment entered in the second proceeding. That same month, the Department of Consumer Affairs notified petitioner that a hearing would be held on her complaint against All Boro on June 27, 1978.

On June 27, 1978, petitioner appeared for the hearing regarding All Boro. She objected to the fact that a shorthand reporter was not

present and she walked out.* Upon her return home, petitioner found that, pursuant to a warrant of eviction, she had been evicted and that Montary Quidley, a City Marshall, was in possession of her apartment.

Thereafter, petitioner contacted the New York City Department of Investigation to complain about the eviction; she was advised to get a lawyer. At about the same time, petitioner was notified by the Department of Consumer Affairs that her complaint against All Boro had been dismissed.

On or about August 30, 1978, petitioner filed a notice of claim against the City for $10,000,000, claiming that the eviction had been illegal.

---

*The hearing was thereafter held in plaintiff's absence and a tape recording was made of the proceedings. The recording was subsequently transcribed but was evidently not made part of the record of the instant case.

On or about November 13, 1978, the Comptroller issued a notice disallowing petitioner's claim.

A year later, on or about November 19, 1979, petitioner instituted the instant action in the United States District Court for the Southern District of New York. She sued the attorneys who represented her former landlord in the eviction proceedings; All Boro Process Service and Peter Zabel, the process servers she hired to serve her complaint on her dentist for alleged improper service; Bruce C. Ratner, Commissioner of the New York City Department of Consumer Affairs and various persons in his office for allegedly wrongfully dismissing her complaint against All Boro; Allen G. Schwartz, New York City Corporation Counsel, Harrison J. Goldin, New York City Comptroller, and personnel of the New York City Comptroller's Office for rejecting her claim against the City for the

allegedly wrongful eviction and for failing to "reconsider" the rejection; New York City Marshall Montary Quidley for the allegedly wrongful eviction; and Stanley N. Lupkin, Commissioner of the New York City Department of Investigation and persons in his Office for alleged wrongful processing of her complaint against Quidley.

II

On or about December 20, 1979, Allen G. Schwartz, New York City Corporation Counsel, submitted an answer, asserting a general denial, stating that the complaint failed to state a claim upon which relief could be granted, and demanding judgment dismissing the complaint. Petitioner submitted her reply to Schwartz' answer on or about January 4, 1980.

On or about January 18, 1980, defendants Lupkin, Mackasek, Fitzer, and Koe I-VI submitted an answer, asserting inter alia, that the claim

failed to state a claim upon which relief could be granted and demanding judgment dismissing the complaint. On or about February 6, 1980, petitioner submitted her reply to the Lupkin answer.

On or about February 19, 1980, petitioner served the summons and complaint on Bruce Ratner. On or about March 13, 1980, petitioner informed the court she was ready to proceed to trial and that Bruce Ratner and "Associates" had failed to answer the "summons" and had therefore defaulted and waived the right to answer.

On or about June 2, 1980, petitioner submitted a notice of readiness stating that none of the defendants had responded to her March 13 notice of readiness and, therefore, she demanded judgment against the defendants.

On or about October 31, 1980, the municipal defendants moved for judgment on the pleadings pursuant to F.R. Civ. P. 12(c). In

his affidavit in support of the motion, defendants' attorney stated that, since petitioner had failed to state a claim against the City defendants, the complaint should be dismissed.

On or about December 13, 1980, petitioner replied to the Corporation Counsel's motion for judgment, purporting to provide such factual information as would defeat the motion. In her memorandum in opposition to the motion she claimed she had been denied her day in court.

OPINION OF THE DISTRICT COURT

By judgment dated March 31, 1981, the District Court (GRIESA, J.) dismissed the action on the defendants' motion. In its decision, the Court stated, as to the claims against the City defendants, inter alia:

> As to all the claims against the City defendants, "the complaint is a hodgepodge of vague and conclusory allegations." Powell v. Jarvis, 460

F. 2d 551 (2nd Cir. 1972) and so should be dismissed. Construing the complaint as liberally as possible, the action should still be dismissed. Advice to "get a lawyer" is nothing on which to base any cause of action under the federal constitution. In connection with the Department of Consumer Affairs, plaintiff has submitted exhibits indicating that a hearing was held and that the evidence she presented on All Boro Process Service was reviewed and found insufficient to warrant any action against All Boro Process Service. None of this gives rise to any federal constitutional claim. Finally, given that plaintiff's $10,000,000 claim against the City was based on her allegedly wrongful eviction, there is no basis for holding that denial of the claim was arbitrary and capricious given the result in the state court actions concerning her eviction. Thus this does not give rise to any federal costitutional claim.

The action is dismissed. [Emphasis added.]

DECISION OF THE COURT OF APPEALS

The Court of Appeals affirmed the judgment of the District Court for the reasons set forth in Judge Griesa's decision. The Court

of Appeals also denied petitioner's October 2, 1981, motion to disqualify the appellate panel.

ARGUMENT

THE DISTRICT COURT, HAVING GIVEN THE COMPLAINT THE MOST LIBERAL READING POSSIBLE, PROPERLY DISMISSED THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF COULD BE GRANTED.

The complaint was properly dismissed as against the City defendants for failure to state a claim upon which relief could be granted.

Construing the complaint as liberally as possible, it is nonetheless plain that petitioner has utterly failed to allege a claim upon which relief could be granted against the City defendants. The claim must be adequately set forth, in a clear statement that gives the defendants fair notice of the nature of the claim. See Conley v. Gibson, 355 U.S. 41 (1957). The District Court properly found that

the instant complaint provided no such statement and presented no such claim.

In essence, the complaint appears to be grounded on petitioner's dissatisfaction with the way certain city agencies handled her various grievances. No where, however, is there any support for the claim that the proceedings were handled improperly; indeed, petitioner does not even articulate the nature of the particular defects she alleges. She complains that the notice of claim she filed with the Comptroller's Office was arbitrarily denied by a form letter "without any hearing whatsoever." See petition at 4-5. Yet there is no requirement that there be such a proceeding at that stage. The notice of claim is, of course, a prerequisite to litigation against the City; but it does not in itself trigger an adversarial proceeding. Rather, it is designed to give the City an opportunity to investigate and, where warranted,

to settle claims so as to avoid litigation. See Kamnitzer v. City of New York, 265 App. Div. 636; 40 N.Y.S. 2d 139 (1st Dept., 1943), cited at page 5 of the petition. Clearly, petitioner had no right to a settlement of her claim and no right to a hearing before the claim was rejected.

It can hardly be said that the denial of petitioner's $10,000,000 claim against the City for her eviction by her private landlord (the propriety of which had been upheld in state court on appeal), was arbitrary. Even if it could be said that the Comptroller was arbitrary in not offering to settle petitioner's claim, this would not amount to a violation of any federally protected interest.

Likewise without merit is petitioner's claim against Allen G. Schwartz, New York City Corporation Counsel. Allen G. Schwartz was never personally apprised of petitioner's notice of claim. Nor can the Department of Investiga-

tion be faulted for advising petitioner to get a lawyer when she complained to them about Marshall Quidley's role in her eviction; certainly no federal cause of action has been stated, and as noted, the eviction had been upheld in state court proceedings.

Also without merit is petitioner's putative claim against the Department of Consumer Affairs. There is no evidence of any defect, procedure or substantive, in the proceedings involving All Boro Process Service. A hearing was held, at petitioner's instance, and the complaint dismissed for lack of evidence.

Finally, the Circuit Court properly refused to disqualify the panel designated to hear the appeal. Assuming certain of the judges on the panel to have had some familiarity with another proceeding with which petitioner was involved (and which petitioner styles a "companion case"), that familiarity alone hardly

suffices as reason for recusal of the panel. See e.g. Weber v. Garza, 570 F.2d 511 (5th Cir. 1978), note at p. 512.

Conclusion

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

February 17, 1982

Respectfully submitted,

FREDERICK A.O. SCHWARZ, Jr.,
Corporation Counsel of the
City of New York
Attorney for City Respondents

LEONARD KOERNER,
TRUDI MARA SCHLEIFER,
of Counsel.

Petitioner's Reply Brief

Office - Supreme Court, U.S.
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MAR 8 1982
ALEXANDER L. STEVAS,
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NO. 81-1329

In The

SUPREME COURT OF THE UNITED STATES
October Term, 1981

Sarah D. Bollotin,

Petitioner,

-vs-

Richard M. Schwartz,Esq., Henry Finkelstein, Esq., Doe I-VI,D.B.A.Finkelstein, Schwartz & Goldstein, P.C., "Doe" Siegel, "Joe" Schwartz, D.B.A. Siegel & Schwartz, Esqs., Robert A. Schwartz, Esq., Peter Zabel, Charles H.Coles, Roe I-VI, D.B.A. All Boro Process Service, Allen G. Schwartz,Esq., N.Y.C. Corporation Counsel, Harrison J. Goldin, N.Y.C. Comptroller, Thomas Leftwich, N.Y.C.Claim Examiner, Poe I-VI, Bruce C. Ratner, Commissioner, N.Y.C.Dept. of Consumer Affairs, Douglas White, Robert J. Egan, Deputies, Moe I-VI, Stanley N. Lupkin, Commissioner, N.Y.C. Dept. of Investigation, Robert Mackasek, Allen Fitzer, Deputies, Koe I-VI, N.Y.C. Marshal Montary Quidley,

Respondents.

PETITIONER'S REPLY BRIEF

Sarah D. Bollotin,
Petitioner, Pro Se,
310 Riverside Drive
New York, N.Y. 10025

PETITIONER'S REPLY BRIEF

Argument

Petiioner files this Reply in order to correct misstatements of fact, omissions and citations taken out of context in Respondent City Defendants' Brief, which relies on Judge Griesa's Opinion and Judgment in the United States District Court (S.D.N.Y.)which the Second Circuit affirmed.

There are no procedural guidelines but petitioner filed Affidavit To Disqualify Panel and requested a hearing in banc as soon as the panel was announced. (See Appendix, infra, A-15 and the Petition at pages 11, 12 and 13).

The Second Circuit Court Clerk failed to transmit this Affidavit to the judges of the court in regular active service and to any other judge who should have been advised and no judge requested that a vote be taken thereon.

Petitioner's Affidavit was a sufficient showing of bias and prejudice against her to deprive the panel of jurisdiction to hear and determine any issue.

Petitioner relied upon the records submitted in Opposition to the Motions To Dismiss and for Summary Judgment.(See Appendix in the lower court, pages A60 through A125* and please take notice of Plaintiff's Memorandum of Law in the Appendix, infra, A 20).

Petitioner submits that the Motions were not presented to the Court in good faith but are nothing more than a ploy, an artifice, designed to obfuscate and deny petitioner her day in court. The Motions violate both the letter and the spirit of the Federal Rules of Civil Procedure.

---

*Rules of the Supreme Court, Rule 13, provides that the Clerk of this Court... may request that ... the record be certified and transmitted to this Court.

Moreover, Rule 9(g) of the General Rules of the U.S. District Court for the Southern District of New York requires that a notice of motion for summary judgment be accompanied by a "short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be tried."... Defendants failed to comply with either the District Court or the Federal statutory requirements.

Judge Griesa's Opinion erroneously refers to two (2) summary proceedings filed by the Law Firm in 1977. Richard M. Schwartz, Esq. avers that he was retained by Avset-Seventh Corpn. on or about August 7, 1977. In fact, as President of Finkelstein & Schwartz, P.C. and acting as attorney for Bernard H. Lange, Receiver, on May 20, 1976 he served petitioner with petition for nonpayment of rent in the N.Y.C. Landlord & Tenant Court, Index No. 61837/1976 with a demand for $2,462.43.

The New York Real Property and Proceedings Law, Article 7, Sec. 711 (8) provides that a receiver of mortgaged premises...cannot, by summary proceedings dispossess...as there is no relationship of landlord and tenant. It was held:

> "The Court lacks jurisdiction over this proceeding because the petitioner/receiver is not a proper party and lacks proper authority to have commenced and maintained this proceeding."
> Curren v. Gillam (1919), 106 Misc.Rep. 652; 176 N.Y.S. 573.

The Law Firm commenced incorporation proceedings in 1976 and under the corporate name of Avset-Seventh Corpn. filed three (3) summary proceedings for nonpayment of rent, namely: 50993/77 followed by 79489/77 and finally, 114170/1977. (See Colloquy from the Certified Shorthand Reporter's transcript before the Second Circuit on October 7, 1981 in Appendix, infra, A24).

Records prove that petitioner was in court on August 22, 1977 and that she answered the

calendar call, contrary to statement made in the U.S. District Court Opinion (A3). All of the Law Firm's nonpayment petitions were served by N.Y.C. Marshal John O. Hughes, who was fully informed that petitioner was involved in a lengthy court battle. For this reason, the Law Firm retained N.Y.C. Marshal Montary Quidley to make the final nonpayment petition service which was not done properly. Consequently, petitioner was lulled into failing to answer.

Petitioner was being shadowed, trailed and cased and filed a million-dollar lawsuit in the N.Y. Supreme Court against the All Boro Process Service. Said complaint was answered by Siegel and Schwartz (See Second group of defendants in Judge Griesa's Opinion (A3, 4).

Petitioner also demanded that Commissioner of Consumer Affairs Bruce C. Ratner revoke their license to serve process and a "hearing" was set on June 27, 1978. While petitioner was at this sham "hearing" N.Y.C. Marshal Quidley

took possession of her apartment and personal property. Petitioner was lulled into a belief that an Official Shorthand Reporter would be present and issues of fact would be presented and argued as required by a judicial proceeding. Instead, petitioner was confronted by Richard M. Schwartz, Esq., attorney for landlord. Petitioner made bitter accusations as she was alone and there was no court reporter. Based on her Civil Court experience with tape recorders, petitioner knew there would never be a record of the proceedings and left.

Petitioner alleged this was part of a carefully planned, orchestrated, staged and executed scheme to evict her illegally, and sued for conspiracy under 42 U.S.C. Section 1983.

Surely, under the Fourth Amendment to the U.S. Constitution, "the right of every person to be secure in their persons, houses, papers and effects, against unreasonable... seizures shall not be violated."

The Fourteenth Amendment provides that:

"No state shall make or enforce any law which shall... deprive any person of life, liberty, or property, without due process ... and equal protection of the laws."

As a result of said wrongful eviction, petitioner made a desperate effort to recover her property and get help from the various agents and servants of the City identified in Judge Griesa's Opinion (A5) as the Third group of defendants. Service of her complaint was beyond the control of petitioner since responsibility therefor is vested in the U.S.Marshal. After numerous complaints their records show the following dates of service: Richard M. Schwartz, Esq., 11-27-79; Allen G. Schwartz, N.Y.C. Corpn. Counsel, 12-6-79; Stanley N. Lupkin, N.Y.C. Commissioner of Investigation, 12-31-79 and Bruce C. Ratner, N.Y.C. Commissioner of Consumer Affairs on 2-19-80.

Siegel & Schwartz and All Boro Process Service were never served. The N.Y.C. Commissioner of Consumer Affairs made default and waived the right to answer in the U.S. District

Court (S.D.N.Y.) The Law Firm has failed and refused to reply to this Petition and waived the right to do so, thus admitting the truth of petitioner's allegations.

The City Defendants hold themselves immune from liability since the N.Y.C. Administrative Code (hereinafter referred to as the Code) bars its' citizens from filing a lawsuit if a claim is not made against the City. However if a claim IS made, there is no provision in the Code which provides for any procedural protection.

City Defendants Reply Brief states that Petitioner sued"the N.Y.C. Comptroller's Office for rejecting her claim... and for failing to 'reconsider' the rejection", referred to as "Agency Recommendation" in the lower court. They state further; "She complains that the notice of claim she filed with the Comptroller's Office was arbitrarily denied by a form letter. ...Yet, there is no requirement that there be such a proceeding at that stage." (Emphasis

added). "The notice of claim is, of course, a prerequisite to litigation against the City; but it does not in itself trigger an adversarial proceeding." (See City Defts' Reply Brief herein at page 11).

This is precisely why petitioner charges that the Code is invalid under the due process and equal protection clauses of the United States Constitution. In view of the fact that petitioner received a final determination from the City, her only recourse is to test the validity of the statute as set forth in the questions presented to this Court. The City does not answer this question.

It is a well-known principle of law that immunity breeds irresponsibility.

Petitioner respectfully prays that this Court grant the Petition For A Writ Of Certiorari.

Respectfully Submitted,

Sarah D. Bollotin

Sarah D. Bollotin,
Petitioner, Pro Se

APPENDIX

APPENDIX

TABLE OF CONTENTS

Page

Judge Griesa's Opinion (In the Petition).. A1

Judgment 79 CIVIL 6197 (TPG) (See Ptn.) .. A9

Second Circuit Opinion (See Petition) . .. A10

INFRA

Affidavit To Disqualify Panel A15

Plaintiff's Memorandum of Law A20

Colloquy From Certified Shorthand Reporter's Transcript Before The Second Circuit on October 7, 1981 . . . . A24

United States Court of Appeals
For The Second Circuit

Sarah D. Bollotin, Plaintiff-Appellant -against- Richard M. Schwartz, Esq., et al, Defendants-Appellees.	Docket No. 1981/7318 AFFIDAVIT TO DISQUALIFY PANEL

State of New York)
) ss.
County of New York)

I, Sarah D. Bollotin, plaintiff-appellant herein, pro se, being duly sworn, depose and say:

"That the within cause of action is a companion case [heard] in the Second Circuit Docket No. 1980/7464, Bollotin v. Kaufman, et al, in which plaintiff-appellant exposed and charged those attorneys with perjury, subornation of perjury and obstruction of justice. Appellant took the case to the United States Supreme Court on Petition For Writ of Certiorari Docket No. 80/1352 but was double-crossed out of her rights by the accused attorneys." (See Plaintiff-Appellant's Reply Brief, pg. 6).

Plaintiff-Appellant argued Docket No. 1980/7464 in the Second Circuit on October 16, 1980 before a panel of judges composed of Henry J. Friendly, Thomas J. Meskill and Walter R. Mansfield (Presiding). This panel put a rubber stamp of approval on the District Court opinion notwithstanding a clear record and oral argument in support of plaintiff-appellant's accusations and charges. Judge Mansfield nodded knowingly at plaintiff-appellant from the bench at the conclusion of her argument but she did not realize the seriousness of the entire matter at that time since she is not a lawyer.

Plaintiff-Appellant's actions were primarily taken for the purpose and object of being vindicated. To the contrary, since she lost said case she has been kept under constant surveillance and has been nearly hounded to death by spies and lies.

Case No. 1980/7464 was filed on 11-28-79 in the District Court and was pushed through

the courts as quickly as possible without any procedural protections being afforded plaintiff, whereas the within action was filed on 11-19-79 and has been subjected to every stall and delay tactic.

In connection with United States Supreme Court Docket No. 1980/1352 plaintiff-appellant made one trip to Washington, D.C. and numerous telephone calls including a call to the office of the United States Solicitor General when she spoke with Ms. Mildred Fannebust who questioned plaintiff-appellant as follows: "Is that Judge Irving Kaufman?" Plaintiff-appellant replied, "No, but I'll bet this Kaufman's his brother!"

In Reply To Respondents' Brief In Opposition To Petition For A Writ of Certiorari, on March 19, 1981, plaintiff-appellant stated: "The blunt question is: Can an attorney deliberately, knowingly and wilfully file a false instrument in the United States District Court and thereafter argue said false and un-

true Second Amended Complaint and mislead petitioner to commit perjury against herself... Petitioner now realizes that her opponents constitute a powerful clubhouse of lawyers and... the lower courts rule on the status of the parties rather than on the merits of the cause."

There is no question that Chief Judge Feinberg is a personal friend of Judge Irving Kaufman and both judges Friendly and Meskill concurred in the opinion which covered up for the District Court Judge who was assigned to cover up material facts.

Plaintiff-Appellant has made repeated attempts to discover the names of the panel herein to no avail until noon of October 1, 1981 at which time Ms. Jean De Freitas advised her also that she would be allotted ten minutes for oral argument on October 7th.

Plaintiff-appellant has no choice but to disqualify this panel under Title 28, Sec. 455, U.S.C. because their "impartiality might rea-

sonably be questioned." This panel is so biased and prejudiced against plaintiff-appellant that it would be an exercise in futility to proceed until an independent-minded and fair court [is sitting] and the issues are so serious that this cause should be heard en banc.

Sworn to before me this
2nd day of October, 1981

/s/ Melvin Goldstein

NOTARY PUBLIC
My Commission Expires

(Stamp) Melvin Goldstein
Notary Public, State of New York
No. 30-1494600
Qualified in Nassau County
Term Expires March 30, 1983

Sarah D. Bollotin

Sarah D. Bollotin,
Pro Se
Plaintiff-Appellant

United States District Court
Southern District of New York

Sarah D. Bollotin,
Plaintiff
-against-
Richard M. Schwartz, Esq. etal
Defendants.

(SEAL)
U.S. DISTRICT COURT
FILED
JAN 5 1981
S.D. OF N.Y.

1979 CIVIL 6197
(TPG)

PLAINTIFF'S MEMORANDUM OF LAW

PRELIMINARY STATEMENT

This memorandum of law is submitted in opposition to defendants' motion for judgment on the pleadings submitted by Allen G.Schwartz, New York City Corporation Counsel and his assistants. Plaintiff went to the various New York City defendants sued herein in search of help. Instead of providing the necessary, impartial services vested in their offices, said defendants breached their duties and responsibilities and conspired against plaintiff.

ARGUMENT

RELEVANT PROVISIONS OF THE FEDERAL RULES OF CIVIL PROCEDURE MUST BE FOLLOWED AND CONSTITUTIONAL AND CIVIL RIGHTS MUST BE RECOGNIZED AND OBSERVED

Defendants' pleadings ignore both statutory and case law as well as the provisions of the United States Constitution. It has been held:

> "That the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim (8) that will give the defendant fair notice...'
>
> "Following the simple guide of Rule 8(f) that 'all pleadings shall be so construed as to do substantial justice' we have no doubt that petitioners' complaint adequately set forth a claim and gave respondents fair notice of its basis.
>
> "The Federal Rules reject the approach that pleading is a game of skill (emphasis added)... and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."
> Conley v. Gibson, 355 U.S. 41, 78 S.Ct.99, 2 L.Ed. 2nd 80 (1957).

Footnotes (8) and 9 in the Conley case, supra, follows:

> "(8). Rule 8(a) (2), 28 U.S.C.A.
> 9. Rule 12(e) motion for a more definite statement.
> Rule 15 (right to amend)."

It has also been held:

> "A far less drastic form of relief is available at this time to the defendants

"in Rule 12(e) which allows them to request a more definite statement of the pleadings..." Hadad v. Lewis, 382 Fed. Supp. 1365 (1974). ...

Plaintiff calls attention of the Court to the dictum that the complaint should be liberally construed and the complaint is entitled to every favorable interpretation since it was drafted by plaintiff, pro se, on her own behalf and plaintiff is not an attorney-at-law. To grant defendants' motion is inconsistent with the legal doctrine of "liberal construction."

"Allegations of pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 92 S.Ct. 594, 404 U.S. 519, 30 L.Ed.2d 652. Rehrg. den. 92 S.Ct. 963, 405 U.S. 948, 30 L.Ed.2d 819.

Finally, the Court must take notice of the fact that there has been no true adversary proceeding. An "Agency Recommendation" which disallowed plaintiff's claim for ten million dollars was neither a judicial nor a quasi-judicial proceeding. There are issues and questions of fact which plaintiff never had any opportunity to submit or argue orally. The disallowance

of plaintiff's claim was wholly arbitrary, capricious, unreasonable and unwarranted. Plaintiff was precluded by said course of conduct of her adversary from participating in an adversary proceeding and having her day in court in violation of plaintiff's civil rights and the provisions of the United States Constitution, particularly the 14th Amendment which reads in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny... the equal protection of the laws..."

CONCLUSION

Demand for judgment should be dismissed and plaintiff should be awarded costs and compensation for her time and for such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

Dated: New York, N.Y.
December 31, 1980

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COLLOQUY FROM CERTIFIED SHORTHAND REPORTER'S TRANSCRIPT BEFORE THE SECOND CIRCUIT ON OCTOBER 7,1981

"Miss Bollotin: I never could get a lawyer...

I also want to point out that the Commissioner of Consumer Affairs waived their right to reply and were guilty of frameup, which is what I alleged in the complaint, and ... the legal papers.

As to the Department of Investigation, I don't know what any of us are paying taxes for to the City of New York. The fact is that there is a disgraceful record of shenanigans which has been in the newspaper... forget about any of the New York City's departments, they are municipal appointments, as were set out in the Kamnitzer case, which I cited.

They are basically political appointees. They owe their job to some politician and if I tried to complain to any of them, forget it; they are political machine hacks.

Now, I want to rebut the law firm because in that matter, the fact is, I have been in

court constantly since January... of 1968, so that I have had a considerable amount of experience.

At no time was I ever accused of a default. I also have in my reply brief exhibits and ex-parte order. The law firm alleges that there was nonpayment of rent. The fact is that there were three court orders and I referred to Exhibit C, page 17 in my reply brief, where the certificate of the Finance Administrator of the City of New York shows cash on deposit of $4,014.12.

On the bottom half of Exhibit C, page 17, in my reply brief Certificate No. 17805, there was...cash on deposit of $3,841.71.

There is a third issue which was about $300-- I am not going to have time to dig up...

And the fact is that my rent was being paid to the Court Clerk.

Sure, they weren't getting the rent. I was under Court order to pay the Civil Court Clerk,

and they were duplicating the filing of petitions for nonpayment, one on top of another, so that when a petition ever got to an appellate term, you got a fragmentation. You did not get a complete story because -- I would also like to mention that in my appendix I served three notices of appeal in the New York Civil Court at 111 Centre Street. The reason --

Judge Feinberg: Miss Bollotin --

Miss Bollotin: The reason I served three notices of appeal is that the first notice was ignored, and the second notice was ignored; and they kept on filing petitions.

The third notice was ignored, and this I have in my appendix twice. There were six notices of appeal.

There was one action which I never got on appeal because the ... judge refused to certify and settle the minutes.

Judge Feinberg: Miss Bollotin, I am afraid your time is about up.

"Miss Bollotin: I believe that I am justified in alleging that here is perjury on its face. Thank you.

Judge Feinberg: Thank you.

We will take the matter under advisement.

The Court is adjourned.

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